

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

JERRY SMITH

v.

HORACE E. PEEK, et al.

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Case No. 2:11-cv-0521-JRG-RSP

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the Court considered the Report and Recommendation of United States Magistrate Judge Roy S. Payne (Dkt No. 17) regarding the Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim (Dkt. No. 15) filed by defendants on May 15, 2012. The plaintiff filed a late response to the Motion to Dismiss on July 9, 2012 (Dkt. No. 19), which will be deemed an objection to the Report and Recommendation. The Court has reviewed that objection and the entire record and is of the opinion that the Report and Recommendation should be and is hereby adopted with respect to the lack of subject matter jurisdiction.

It is accordingly ORDERED that the Motion to Dismiss (Dkt. No. 15) will be GRANTED and a judgment will be entered that all claims by plaintiff against defendants will be DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction.

So ORDERED and SIGNED this 30th day of July, 2012.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE